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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 M.G., et al.,

12 Plaintiffs,

13 vs.

14 METROPOLITAN  
15 INTERPRETERS and  
TRANSLATORS, INC., et al.,

16 Defendants.

CASE NO. 12cv460-JM (MDD)

ORDER GRANTING MOTION  
TO STAY DISCOVERY

[ECF NO. 52]

17 Before the Court is the motion of the Federal defendants<sup>1</sup> filed on  
18 February 13, 2013, to stay discovery. (ECF No. 52). According to the  
19 Federal defendants, the Plaintiffs do not oppose. The non-Federal  
20 defendants, however, consisting of Metropolitan Interpreters and  
21 Translators, Inc. , and individual defendants employed by Metropolitan  
22 identified by their initials, J.C., R.P., M.L. and B.A., have opposed any  
23 stay regarding their cases. (ECF No. 53).<sup>2</sup>  
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25 <sup>1</sup> The Federal defendants are the United States of America and Eileen Zeidler,  
26 Sondra Hester, Darek Kitlinski and William R. Sherman. The individual defendants are  
employees of the United States Drug Enforcement Administration. (ECF No. 52 at 1-2).

27 <sup>2</sup> It is not clear whether Metropolitan is opposing the stay only for itself or also  
28 on behalf of its named employees. (See ECF No. 53). Since the named employees are  
represented by the same counsel and their interests appear aligned, for now, with  
Metropolitan, the Court will assume that Metropolitan is opposing the motion to stay

1 Plaintiffs are current and former employees of Metropolitan who  
2 worked as linguists. According to Plaintiffs, Metropolitan had a contract  
3 with the Drug Enforcement Administration for translation services and  
4 Plaintiffs were assigned work, from time to time, pursuant to that  
5 contract. Plaintiffs main allegations are that they suffered adverse  
6 employment action and were otherwise damaged or aggrieved by being  
7 subjected to polygraph examinations by Drug Enforcement  
8 Administration personnel allegedly in violation of the Employee  
9 Polygraph Protection Act, 29 U.S.C. § 2002.

#### 10 Procedural History

11 The Complaint was filed on February 23, 2012, and named only  
12 Metropolitan and certain of its employees. (ECF No. 1). The Complaint  
13 was amended with the filing of the First Amended Complaint on April 5,  
14 2012, which again was limited to Metropolitan and certain employees.  
15 (ECF No. 14). Following resolution of pre-answer motions, Metropolitan  
16 and the named employees filed their Answer on August 1, 2012. (ECF  
17 No. 21). An Early Neutral Evaluation with the Court was held on  
18 September 10, 2012. (ECF Nos. 27, 28). A Case Management  
19 Conference was held on October 30, 2012. (ECF No. 33). On that same  
20 day, the Court granted Plaintiffs' unopposed Motion and allowed the  
21 filing of the Second Amended Complaint. (ECF Nos. 29, 30). The  
22 Federal defendants were added to the case at that time. The Federal  
23 defendants have not answered the Complaint, instead moving, on  
24 January 29, 2013, to dismiss the Second Amended Complaint as to all  
25 Federal defendants on grounds of sovereign and qualified immunity.  
26 (ECF No. 48).

27 Discovery commenced between Plaintiffs and the non-Federal  
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for all non-Federal defendants.

1 defendants with the exchange of initial disclosures pursuant to  
2 Fed.R.Civ.P. 26(a) no later than October 26, 2012. (ECF No. 28 at 1-2).  
3 Formal discovery has been open between them at least as of October 30,  
4 2012, if not earlier. (See ECF No. 53 at 1).

#### 5 Discussion

6 The Federal defendants seek to have discovery completely stayed  
7 pending the outcome of their motion to dismiss. (ECF No. 52 at 5-6).  
8 Alternatively, the Federal defendants seek a stay of discovery only as to  
9 them and request leave to re-open depositions taken during the stay  
10 period if they remain in the case. (*Id.* at 6).

11 The Court agrees with the Federal defendants that, at a minimum,  
12 discovery should be stayed as to them. A defendant asserting immunity  
13 should be free from all burdens of litigation. See *Ashcroft v. Iqbal*, 556  
14 U.S. 662, 685 (2009). Although *Iqbal* involved the assertion of qualified  
15 immunity, the Court agrees that the same view should obtain with  
16 regard to the assertion of sovereign immunity. See, e.g., *Lindhurst v.*  
17 *USA, Social Security Administration*, 2012 WL 5381576 \*2 (D. Colo.  
18 October 31, 2012).

19 The more challenging question is whether to stay discovery  
20 completely or to allow discovery otherwise to proceed. In *Iqbal*, the  
21 Supreme Court stayed discovery for all defendants stating that to do  
22 otherwise would not truly relieve the stayed defendants from the  
23 burdens of discovery. The Court stated:

24 It is no answer to these concerns to say that discovery for  
25 petitioners can be deferred while pretrial proceedings  
26 continue for other defendants. It is quite likely that, when  
27 discovery as to the other parties proceeds, it would prove  
28 necessary for petitioners and their counsel to participate in  
the process to ensure the case does not develop in a  
misleading or slanted way that causes prejudice to their  
position. Even if petitioners are not yet themselves subject to  
discovery orders, they would not be free from the burdens of  
discovery.

1 *Ashcroft v. Iqbal*, 556 U.S. at 685.

2 Other courts, although recognizing this statement from *Iqbal* as dicta,  
3 nevertheless have agreed that all discovery should be stayed when any  
4 defendant raises an immunity defense. *See A.A. v. Martinez*, 2012 WL  
5 5974170 \*1-2 (D. Colo. October 9, 2012).

6 The Court is not convinced that an automatic stay of all discovery  
7 is required in every case in which a defendant raises a claim of  
8 immunity. Rather, the Court should consider the nature of the case and  
9 the extent to which proceeding with discovery as to other parties likely  
10 would prejudice the stayed defendants, the impact on other parties and  
11 the court. Courts are empowered to fashion such protective orders as  
12 may be needed to protect the stayed defendants and maintain efficiency  
13 if the circumstances of the case so suggest. *See Fed.R.Civ.P. 26(c)*.

14 In this case, it appears that the conduct of the government actors is  
15 inextricably intertwined with the allegations against the non-Federal  
16 defendants. The gravamen of the defense for the non-Federal  
17 defendants is that the Federal defendants required the polygraph  
18 examinations and the contract required that any communications  
19 between DEA and Metropolitan were required to flow through  
20 Metropolitan. (*See, e.g., Answer to Amended Complaint*, ECF No. 34 at  
21 ¶¶ 38, 46, 58). Consequently, discovery into the actions of the Federal  
22 defendants, whether obtained from Plaintiffs, from the non-Federal  
23 defendants or from third parties, is critical to establishing facts to  
24 support the defense of the non-Federal defendants. The concerns  
25 expressed in *Iqbal* regarding potential prejudice to stayed defendants  
26 appears real in this case if discovery is allowed otherwise to proceed.

27 The Court appreciates the frustration expressed by the non-Federal  
28 defendants but cannot conceive of a protective order that would

1 adequately protect the Federal defendants during the stay. It is not a  
2 satisfactory solution to allow discovery otherwise to proceed. To avoid  
3 prejudicing their position, the Federal defendants, through counsel,  
4 either would have to attend the depositions that may occur or would  
5 have to seek leave to re-take depositions in which their interests have  
6 not been adequately explored or in which their position has been  
7 mischaracterized. With the first option, the burden of discovery would  
8 not been lifted as required by law. With the second option, witnesses  
9 and other parties may have to be re-deposed which is inefficient and  
10 burdensome.

11 Conclusion

12 The motion of the Federal defendants to stay discovery pending a  
13 ruling on their Motion to Dismiss is **GRANTED**. Discovery is stayed for  
14 all parties until further Order of this Court. The parties are instructed  
15 to contact this Court within three (3) business days of the ruling on the  
16 pending Motion to Dismiss (ECF No. 48) for further proceedings.

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18 IT IS SO ORDERED.

19 DATED: February 26, 2013

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22 Hon. Mitchell D. Dembin  
23 U.S. Magistrate Judge  
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